

THURSDAY, APRIL 18, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 9:35 a.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss Revenue and Taxation Code sections 7093.5, 7093.5(b)(3), 30459.1 and 50156.11, settlements and personnel matters.

The Board recessed at 9:40 a.m. and reconvened immediately in open session with Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

CHIEF COUNSEL MATTERS

RULEMAKING

Adoption of Changed Version of Sales and Use Tax Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record *Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6357.1, granting a partial exemption from tax for sales of diesel fuel used in farming activities or food processing under defined conditions. (AB 426, Stats. 2001, Ch. 156, § 6.) (Exhibit 4.6)

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board adopted the changed version of *Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing*.

Exhibits to these minutes are incorporated by reference.

Authorization to Publish Sales and Use Tax Regulation 1671.1, Rebates and Incentives

Janice Thurston, Assistant Chief Counsel, Legal Division, made introductory remarks regarding *Sales and Use Tax Regulation 1671.1, Rebates and Incentives*. Ms. Thurston stated for the record at the October 31, 2000, Business Taxes Committee meeting, where proposed revisions to Audit Manual, Chapter 9, Grocers, were presented for discussion the

THURSDAY, APRIL 18, 2002

revisions included the creation of a new section for the application of tax to buy-down rebates and incentive programs. Rather than making this change in the application of tax through the Audit Manual, the Business Taxes Committee directed staff to proceed through the regulatory process and present a proposed regulation on rebates and incentive programs. (Exhibit 4.7).

Speakers: Peter Larkin, President, California Grocers Association
John Handley, California Independent Grocers Association

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered the language "oral contract" be deleted from *Regulation 1671.1, Rebates and Incentives*.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang and Mr. Andal voting yes, Mr. Klehs voting no, Ms. Mandel abstaining and Mr. Chiang not participating, the Board adopted the industry's version of *Regulation 1671.1, Rebates and Incentives*.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the state Board of Equalization and the State of California (Exhibit 4.8).

Patricia Ann Lepe, Business Taxes Compliance Supervisor, VanNuys District Office
Ramona A. Dean, Tax Technician II, Eureka Branch Office

BOARD COMMITTEE REPORTS

Legislative Committee

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Legislative Committee report.

THURSDAY, APRIL 18, 2002

Customer Services and Administrative Efficiency Committee

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel abstaining, the Board approved Item 1 of the Customer Services and Administrative Efficiency Committee report.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved Item 2 of the Customer Services and Administrative Efficiency Committee report.

Property Tax Committee

Upon motion of Mr. Andal seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Property Tax Committee report.

LEGAL APPEALS MATTERS, ADJUDICATORY**Action Medical Products, Inc., 57424**

5-10-91 to 12-31-98, \$865,982.00 Tax

Considered by the Board: Memorandum Opinion

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang abstaining, the Board adopted the alternative Memorandum Opinion as proposed by Mr. Andal.

Casmalia Disposal, 89000924710

7-1-90 to 6-30-91, \$421,200.00 Fee

Considered by the Board: March 13, 2002

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Klehs. No other contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, Mr. Chiang abstaining and Mr. Klehs not participating, the Board ordered to grant the petition.

Conam Inspection, Inc., 89002320200

4-1-94 to 3-31-97, \$62,686.12 Tax

Conam-MMP, Inc., 89000966320

4-1-95 to 12-31-97, \$45,191.20 Tax

\$00.00 Penalty, Failure to File

Considered by the Board: March 13, 2002

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

THURSDAY, APRIL 18, 2002

Action: Mr. Parrish made a motion to reduce the measure of tax by 40 percent. The motion failed for lack of a second.

Upon motion of Mr. Andal, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered to delete the penalties, and redetermined the petition as recommended by the Appeals Section.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Ms. Mandel not participating in *Avnet Inc.*, 89000228820, the Board made the following orders:

Coleman B. Looney, 89000386250

7-1-94 to 6-30-97, (\$18,185.54) Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Energy Conversions, Inc., 89000676930, 89000676950

1-1-92 to 12-31-95, \$176,562.10 Tax

10-1-94 to 12-31-95, \$31,045.96 Tax

Action: Redetermine as recommended by the Appeals Section.

Pacificare Health Systems, Inc., 40927, 78626

6-1-96 to 12-31-97, \$125,305.29 Claim for Refund

1-1-98 to 12-31-98, \$2,945.28 Claim for Refund

Action: Redetermine as recommended by the Appeals Section.

Truxign, Inc., 82994, 66685

1-1-96 to 12-31-98, \$13,262.69 Tax

Action: Redetermine as recommended by the Appeals Section.

Computervision Corporation, 89000819990

1-1-93 to 12-31-95, \$248,640.13 Tax

Action: Redetermine as recommended by the Appeals Section.

SFPP, LP

3-7-98 to 6-30-99, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

Avnet, Inc., 89000228820

1-7-91 to 6-30-95, \$34,798.10 Tax

Action: Grant the petition for rehearing as recommended by the Appeals Section.

Ms. Mandel not participating.

THURSDAY, APRIL 18, 2002

Michael Keith Easley, 89002083430

1-1-95 to 6-30-98, \$19,640.59 Tax

\$00.00 Penalty, Failure to File

Action: Deny the petition for rehearing as recommended by the Appeals Section.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Caren Abdela, 62403

1997, \$465.00 Tax

\$116.25 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Michael S. and Linda D. Bull, 88709

1994, \$1,604.00 Tax

\$399.00 Penalty, Late Filing

\$320.80 Penalty, Accuracy Related

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Estate of Robert Macko and Estate of Mary Macko, 93410

1988, \$3,759.00 Tax

\$939.75 Penalty, Failure to File

1989, \$4,213.00 Tax

\$1,053.25 Penalty, Failure to File

Action: Sustain the modified action of the Franchise Tax Board

Daniel Sundstrom, 106413

1998, \$6,825.00 Tax

\$1,706.25 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

THURSDAY, APRIL 18, 2002

David Easler, 111023

1998, \$5,601.00 Tax

\$1,400.25 Penalty, Late Filing

\$1,400.25 Penalty, Notice and Demand

Action: Sustain the modified action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Robert Dake, 115279

1998, \$4,796.00 Tax

\$1,199.00 Penalty, Late Filing

\$1,199.00 Penalty, Notice and Demand

Action: Sustain the action of the Franchise Tax and impose a \$1,000.00 frivolous appeal penalty.

Robin D. Fortini, 118456

1997, \$1,228.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board

Robert B. and Karen L. Keller, 118472

1997, \$1,557.00 Tax

Action: Sustain the action of the Franchise Tax Board

Sharon Saunders, 118626

1998, \$1,642.00 Tax

\$410.50 Penalty, Late Filing

\$537.50 Penalty, Notice and Demand

Action: Sustain the action of the Franchise Tax and impose a \$2,500.00 frivolous appeal penalty.

Lydia Summers, 127693

1988, \$306.03 Claim for Refund

Action: Sustain the action of the Franchise Tax Board

Joel Berryhill, Jr. and Julie Anderson, 129238

1997, \$608.00 Tax

\$100.00 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board

Edith I. Butler, 129429

1997, \$1,671.00 Tax

\$416.00 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board

THURSDAY, APRIL 18, 2002

Lawrence N. and Eris M. Field, 130131

1995, \$3,844.00 Assessment

1996, \$8,300.00 Assessment

1997, \$1,579.00 Assessment

Action: Sustain the action of the Franchise Tax Board

David G. Lamons, 133700

1997, \$295.00 Assessment

Action: Sustain the action of the Franchise Tax Board

Alberto and Zonia Pullen, 134952

1993, \$1,083.00 Assessment

Action: Sustain the action of the Franchise Tax Board

Paul Krieg, 135119

1985, \$1,383.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board

Richard A. and Suzanne L. Crooker, 135933

1992, \$2,345.89 Claim for Refund

Action: Sustain the action of the Franchise Tax Board

RI Partners, a California Limited Partnership, 136371

1997, \$800.00 Claim for Refund

\$400.00 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board

Etienne and Denise Graves, 136798

1997, \$540.00 Assessment

Action: Sustain the action of the Franchise Tax Board

James J. Hill, Jr. and Alice L. Hill, 136799

1997, \$1,600.00 Assessment

Action: Sustain the action of the Franchise Tax Board

Edward Taapken, 139593

1996, \$357.00 Assessment

Action: Sustain the action of the Franchise Tax Board

Orville L. Roache, 97699

1998, \$1,916.00 Tax

\$479.00 Penalty, Late Filing

Action: Deny the petition for rehearing.

THURSDAY, APRIL 18, 2002

Ron and Beth Heffner, 106408

1996, \$2,456.00 Assessment

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Linda Sarnataro, 126994

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Freddie L. Wilson, 139215

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Francesca Leonard, 140030

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Dominique X. Thomas, 141699

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Temeika S. Spates-Garrett, 145215

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES, DENIALS OF CLAIMS FOR REFUND AND DENIALS OF RELIEF OF PENALTY, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund and Denials of Relief of Penalty, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

AIO Corporation, 142130

4-1-98 to 12-31-00, \$88,886.75

Action: Approve the redetermination as recommended by staff.

THURSDAY, APRIL 18, 2002

American Colloid Company, 109219

10-1-96 to 12-31-99, \$141,992.66

Action: Approve the redetermination as recommended by staff.

Mercy Air Service Inc., 134293

12-13-93, \$113,625.07

Action: Approve the redetermination as recommended by staff.

GRM Aviation Inc., 136123

1-4-00, \$158,414.00

Action: Approve the redetermination as recommended by staff.

Adelaide Leasing Company, 138692

5-18-00, \$185,625.00

Action: Approve the redetermination as recommended by staff.

Gregory B. Chabrier, 141081

4-24-00, \$195,937.50

Action: Approve the redetermination as recommended by staff.

Alpine Industries Inc., 93436

10-1-97 to 7-10-00, \$176,602.33

Action: Approve the redetermination as recommended by staff.

Newell Operating Company, 115543

1-1-97 to 12-31-99, \$1,269,402.40

Action: Approve the redetermination as recommended by staff.

The C.I.T. Group/Equipment Financing, 157460

4-1-01 to 5-30-01, \$77,578.48

Action: Approve the relief of penalties as recommended by staff.

Continuum, 82102

7-1-96 to 6-30-99, \$95,442.27

Action: Approve the denial of claim for refund as recommended by staff.

SZ Testsysteme Inc., 53157

10-1-99 to 12-31-99, \$55,687.50

Action: Approve the denial of claim for refund as recommended by staff.

CRTV Concepts in Advertising, Inc., 161612

4-1-97 to 3-31-00, \$52,803.89

Action: Approve the denial of relief of penalty as recommended by staff.

THURSDAY, APRIL 18, 2002

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Jet Aviation California Inc, 158088

6-30-98, \$1,518,000.00

Action: Approve the credit and cancellation as recommended by staff.

Seaview Charter Inc., 162008

5-26-00, \$64,343.64

Action: Approve the credit and cancellation as recommended by staff.

Steven M. Self, 161906

4-1-96 to 3-31-97, \$93,521.74

Action: Approve the credit and cancellation as recommended by staff.

National Medical Care, Homecare Division, Inc., 89000080330

7-1-90 to 12-31-95, \$818,993.72

Action: Approve the refund as recommended by staff.

National Medical Care, Homecare Division, Inc., 59219

4-1-97 to 7-28-98, \$297,633.25

Action: Approve the refund as recommended by staff.

National Medical Care, Homecare Division, Inc., 60413

1-1-97 to 3-31-97, \$1,043,996.51

Action: Approve the refund as recommended by staff.

Chevron USA Inc., 227660

1-1-91 to 12-31-97, \$123,573.28

Action: Approve the refund as recommended by staff.

Birchwood Cabinets of California Inc., 157511

1-1-98 to 12-31-00, \$56,575.23

Action: Approve the refund as recommended by staff.

The Manufacturers Life Insurance Company, 80567

4-1-97 to 6-30-00, \$121,174.76

Action: Approve the refund as recommended by staff.

THURSDAY, APRIL 18, 2002

Krones Inc., 129046

4-1-00 to 12-31-00, \$80,557.63

Action: Approve the refund as recommended by staff.

Worldstor Inc., 158355

7-1-00 to 9-30-00, \$264,199.24

Action: Approve the refund as recommended by staff.

Siemens Power Transmission & Distributor, 161698

10-1-99 to 12-31-00, \$353,001.16

Action: Approve the refund as recommended by staff.

Pacific Bell, 157124

1-1-98 to 6-30-00, \$349,054.60

Action: Approve the refund as recommended by staff.

Ecometry Corporation, 118729

1-1-00 to 12-31-00, \$92,313.38

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Special Taxes Matters, Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Texaco Refining and Marketing, Inc., 89000006530

10-1-97 to 10-31-97, \$75,600.00

Action: Approve the Denials of Claims for Refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Texaco Refining and Marketing, Inc., 89000006540

8-1-97 to 8-31-97, \$336,775.17

Action: Approve the Denials of Claims for Refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

SPECIAL TAXES MATTERS, REFUND, CONSENT

With respect to the Special Taxes Matters, Refund, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

THURSDAY, APRIL 18, 2002

Thrifty Payless, Inc., 156526

6-1-98 to 12-31-00, \$382,477.97

Action: Approve the refund as recommended by staff.

**PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE
STATUTE**

With respect to the Property Taxes Matters Not Subject to Contributions Disclosure Statute Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Private Railroad Car Tax Penalty Cancellation Request

Trinity Chemical Leasing, LLC (6920)

2001, \$322.59

Action: Deny the petition for cancellation of the penalty as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Unitary and Nonunitary Escaped Assessments

Verizon California, Inc., (201)

1998-2000, \$28,936.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Worldcom International Data Services, Inc. (2322)

1999-2001, \$2,379,339.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Bay Area Cellular Telephone Company, dba AT&T Wireless Services (2502)

1998-2000, \$1,354,473.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Verizon Wireless-San Diego, dba Verizon Wireless (2512)

1998-2000, \$819,979.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

THURSDAY, APRIL 18, 2002

Sacramento Valley Ltd. Partnership, dba Verizon Wireless (2513)

1998-2000, \$231,336.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Los Angeles SMSA Ltd., dba Verizon Wireless (2532)

2000-2001, \$325,723.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

AB Cellular Holding, LLC, dba AT&T Wireless Services (2547)

1999-2001, \$1,173,619.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Fresno MSA Ltd. Partnership, dba Verizon Wireless (2552)

1998-2000, \$2,363,173.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

GTE Mobilnet of California, Ltd. Partnership, dba Verizon Wireless (2559)

1998-2000, \$7,547,084.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

AT&T Wireless Services of California, Inc. (2600)

1998-2000, \$259,897.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

AT&T Wireless Services of California, Inc. (2606)

1998-2001, \$5,884,831.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Bakersfield Cellular Telephone Company, dba AT&T Wireless Services (2622)

1998-2001, \$450,141.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Santa Barbara Cellular Systems, Ltd., dba AT&T Wireless Services (2626)

1998-2001, \$815,134.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

THURSDAY, APRIL 18, 2002

GTE Mobilnet of Santa Barbara L.P., dba Verizon Wireless (2627)

1998-2000, \$643,003.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Redding Cellular Partnership, dba AT&T Wireless Services (2639)

1998-2000, \$294,071.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Visalia Cellular Telephone Company, dba AT&T Wireless Services (2641)

1998-2000, \$144,103.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Cal-One Cellular, L.P., dba Cal-North Cellular (2659)

2000, \$24,518.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

WWC License LLC (2665)

2001, \$48,000.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

GTE Mobilnet of Central California, Inc., dba Verizon Wireless (2667)

1998-2000, \$554,491.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

California RSA #4 Partnership, dba Verizon Wireless (2669)

1999-2000, \$361,185.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Gulf Coast Broadcasting Corp., dba Verizon Wireless (2731)

1999-2001, \$176,522.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

THURSDAY, APRIL 18, 2002

VIA Wireless LLC (2747)

2000, \$172,567.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Cingular (2748)

1998-2000, \$3,302,999.00 Value

1997-2001, \$1,137,508.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

AT&T Wireless PCS, LLC (2749)

2000, \$588,930.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Cal-Autofone (3369)

1998-2000, \$75,179.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Williams Communications LLC, dba Williams Network, Inc. (7819)

2000-2001, \$1,609,821.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Cox Communications PCS L.P. (2720)

1999-2001, \$1,820,809.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Sprint Spectrum L.P., dba Sprint PCS (2722)

1998-2001, \$1,612,544.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Nextel of California, Inc. (2737)

1998-2001, \$53,213,892.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board recessed at 10:20 a.m. and reconvened at 10:25 a.m. with Mr. Chiang, Mr. Parrish, Mr. Klehs, Mr. Andal and Ms. Mandel present.

THURSDAY, APRIL 18, 2002

BUSINESS TAXES APPEALS HEARINGS

Rhodia, Inc., 60469, 78672

7-1-97 to 3-31-00, \$50,000.00 Claim for Refund

4-1-98 to 3-31-99, \$50,000.00 Claim for Refund

For Petitioner:

William Vande Wetering, Attorney

Joseph Vinatieri, Attorney

Tom Benner, Taxpayer

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether claimant's regeneration of spent sulfuric acid constitutes taxable fabrication labor or merely the repair or reconditioning of tangible personal property for the use for which it was originally produced.

If claimant's regeneration is not fabrication labor, whether tax applies to claimant's transfer of commingled regenerated sulfuric acid under California Code of Regulations, Title 18, section 1546, subdivision (b)(4).

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

Upon a single motion of Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board directed staff to draft a letter to industry on behalf of the Board requesting these companies to inform this Board the locations of their "towers" to be properly assessed. If these companies are not in compliance, they will have to appear before the Board.

BUSINESS TAXES APPEALS HEARINGS

Jerome G. Morgan, 62763

5-31-99, \$26,777.00 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department: Trecia Nienow, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether documentation presented proves that the vessel was purchased, delivered, and used outside California.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

THURSDAY, APRIL 18, 2002

Lancaster Colony Commercial Products Inc., 61942

1-1-90 to 6-30-97, \$73,270.88 Tax, \$00.00 Penalty, Failure to File

For Petitioner: Appearance Waived

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence shows that petitioner is not "engaged in business" in this state for purposes of Revenue and Taxation Code section 6203.

Whether the remaining unreported taxable sales are valid sales for resale.

Whether petitioner is responsible for collecting and reporting use tax on sales to out-of-state retailers with delivery by common carrier directly to the retailers' customers in this state (drop shipments).

Whether it is proper to add a markup to petitioner's selling price to compute audited drop shipment sales.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Section.

Edward Jack Sandel, 89000335440, 89000335460

4-1-90 to 6-30-90, \$00.00 Tax, \$140.74 Penalty, Failure to File

7-1-89 to 6-30-92, \$33,032.11 Tax

Action: The Board took no action.

FINAL ACTION ON PETITION HEARD APRIL 18, 2002

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition of *Rhodia, Inc., 60469, 78672*, be redetermined as recommended by the Appeals Section.

The Board adjourned at 11:10 a.m.

The foregoing minutes are adopted by the Board on May 30, 2002.